United Sanitation Services, Division of Sanitas Service Corp. *and* Southern Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 12-CA-8876, 12-CA-9071, 12-CA-9266, and 12-RC-5772

July 27, 1982

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On December 4, 1981, Administrative Law Judge Thomas A. Ricci issued the attached Decision in this proceeding. Thereafter, the Respondent, the General Counsel, and the Charging Party filed exceptions and supporting briefs, and the Respondent and the General Counsel filed answering briefs.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions[3] of the Administrative Law Judge and to adopt his recommended Order, as modified herein.[4]

The Administrative Law Judge found that the Respondent's chief executive officer, Lewis Goodman, solicited grievances from employees at a meeting in order to discourage union activity. Counsel for the General Counsel correctly points out in his answering brief that the Administrative Law Judge inadvertently assumed that this meeting occurred after the Employer was aware of union activities, but that the record does not so reflect. Therefore, we find that this conduct did not violate the Act.

The Administrative Law Judge also found that Supervisor Garcia threatened employee Rodriguez to the effect that, if the Union went on strike, the work would continue anyway, even if he had to shoot somebody. Counsel for the General Counsel states that this statement was not alleged in the complaint to be a violation, that the Administrative Law Judge inadvertently credited an incorrect translation of Rodriguez' testimony, and that the issue was not fully litigated at the hearing. Accordingly, we find that whatever statement was made did not constitute a violation of the Act.

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[1] As the record adequately presents the positions of the parties, the Respondent's request for oral argument is hereby denied.

[2] The Respondent asserts that the Administrative Law Judge's resolutions of credibility, findings of fact, and conclusions of law are the result of bias. After a careful examination of the entire reord, we are satisfied that this allegation is without merit. There is no basis for finding that bias and partiality existed merely because the Administrative Law Judge resolved important factual conflicts in favor of the General Counsel's witnesses. As the Supreme Court stated in *N.L.R.B. v. Pittsburgh Steamship Company*, 337 U.S. 656, 659 (1949), "[T]otal rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact." Furthermore, it is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We find no basis for reversing his findings.

[3] The General Counsel has excepted to the Administrative Law Judge's failure to address and find certain alleged violations of Sec. 8(a)(1). We find it unnecessary to pass on these complaint allegations, as findings of such additional violations would be essentially cumulative and would not materially affect the Order.

The Administrative Law Judge erroneously found that the conversation between Assistant Manager Lennon and employee McDonald occurred a week before the election, rather than a week after the election. In that conversation, it was employee Lee who was named by Lennon as the "first to go," rather than employee McDonald, as the Administrative Law Judge erroneously indicated at one point in his Decision. Finally, the Respondent's safety director asked the State Motor Vehicle Bureau for a report on the status of the drivers' licenses shortly after the election, rather than before the election. We hereby correct these inadvertent errors.

In recounting the tally of ballots, the Administrative Law Judge erroneously stated that he sustained four rather than five of the nine challenges. We hereby correct this inadvertent error. Since the Union was ahead by six votes, the ballot of Jose Mole is not determinative and we find it unnecessary to pass thereon.

Chairman Van de Water might not find a violation of the Act in the Respondent's invitation to employees to report any instances of union pressure if that matter were considered alone. However, when considered in connection with the other violative conduct, especially that of asking employees to surveil each other, he does find that conduct violative of the Act. Member Hunter would not find that an invitation to report union pressure, standing alone, violates the Act. However, he agrees with the Chairman that, in the circumstances of the instant case, particularly the finding that the Respondent explicitly solicited employees to engage in surveillance, the finding of a violation in this regard is warranted.

In its Objections 2a and 2j, the Respondent contends that the Union made material misrepresentations by telling the employees that (1) dues could be as little as the employees wanted them to be when, in fact, the Union's constitution required that they be a minimum of $11 per month, and (2) they would have the option of requiring the Company to pay the entire amount for insurance coverage. These objections are overruled for the following reasons. With respect to the dues allegation, the evidence concerning what representations were made to employees by union representatives is extremely vague. Furthermore, the Respondent has not substantiated its claim that the Union's constitution requires that dues be a minimum of $11 per month. In any event, the Respondent addressed this issue when it deducted $10 from employees' paychecks in order to demonstrate to them the effect of union dues on the amount of their check. With respect to the insurance allegation, we find that this statement did not exceed the bounds of privileged campaign propaganda. *El Fenix Corporation*, 234 NLRB 1212 (1978); *The Smith Company, successor to Republic Corporation Marketing Services*, 192 NLRB 1098 (1971). Chairman Van de Water and Member Hunter conclude that Objections 2a and 2j are without merit under either the standard of *Shopping Kart Food Market, Inc.*, 228 NLRB 1311 (1977), or the standard of *Hollywood Ceramics Company, Inc.*, 140 NLRB 221 (1962), reaffirmed in *General Knit of California, Inc.*, 239 NLRB 619 (1978).

In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

[4] We have modified par. 2(a) of the Adminstrative Law Judge's recommended Order to include the Board's usual make-whole language.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, United Sanitation Services, Division of Sanitas Service Corp., Miami, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraphs 1(c) and 1(g) and appropriately reletter the remaining paragraphs.

2. Substitute the following for paragraph 2(a):

"(a) Pay to the estate of Terry Lee the monetary value of any loss of earnings which he may have suffered by virtue of the discrimination against him. Backpay and interest thereon is to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

3. Substitute the attached notice for that of the Administrative Law Judge.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Southern Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board having found, after a hearing, that we violated the National Labor Relations Act, as amended, by unlawfully discharging an employee and otherwise improperly coercing our employees:

WE WILL NOT discharge or otherwise discriminate against our employees because they have engaged in concerted or protected union activities.

WE WILL NOT ask our employees to report strong solicitation of them by union organizers.

WE WILL NOT inquire of our employees whether union agents have asked them to join a union.

WE WILL NOT inquire of our employees whether or not they favor a union.

WE WILL NOT ask our employees to report to management the identity of fellow employees who attend union meetings.

WE WILL NOT threaten to discharge employees in retaliation for their prounion sentiments or activities.

WE WILL NOT threaten to discharge employees if they should engage in a strike.

WE WILL NOT tell employees that management maintains a list of prounion-minded employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to join or assist Southern Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any other labor organization, and to engage in other concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

WE WILL pay into the estate of former employee Terry Lee an amount equal to any loss of earnings he may have suffered in consequence of our illegal discharge, with interest.

UNITED SANITATION SERVICES, DIVISION OF SANITAS SERVICE CORP.

DECISION

STATEMENT OF THE CASE

THOMAS A. RICCI, Administrative Law Judge: This is a consolidated proceeding, joining a representation case with an unfair labor practice case, in which a hearing was held on December 15, 16, 17, and 18, and on July 20, 21, and 22, 1981, at Coral Gables, Florida. On August 26, 1980, the General Counsel issued a consolidated complaint (Cases 12-CA-8876, 12-CA-9071, and 12-CA-9266) against United Sanitation Services, Division of Sanitas Services Corp., here called the Respondent or the Company. The complaint rested upon separate charges filed by Southern Conference of Teamsters, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, here called the Union. In Case 12-RC-5772, upon an election petition filed by the Union, a Board-conducted election was held on January 25, 1980, among the approximately 150 employees of the Respondent. The results were inconclu-

sive because of challenges affecting the results of the election. Thereafter timely objections to the election were filed by both the Union and the Company. The combined proceedings were then joined by the Regional Director for a single hearing on the unfair labor practices alleged, the challenges remaining at issue, and the merits of both objections.

The complaint alleges multiple violations of Section 8(a)(1) by the Respondent and the alleged unlawful discharge of a man named Terry Lee. The Union's objections rest essentially upon alleged misconduct by the Respondent occurring before the election. The Company's objections raise matters of another kind. Briefs were filed by all parties after the close of the hearing.

Upon the entire record, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a Connecticut corporation licensed to do business in the State of Florida, with an office in Miami, Florida. During the 12-month period preceding issuance of the complaint, a representative period, it provided services valued in excess of $50,000 to customers located within the State of Florida who meet a direct jurisdictional standard of the Board. I find that the Respondent is an employer engaged in commerce within the meaning of the Act.

II. THE LABOR ORGANIZATION INVOLVED

I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A number of the violations of Section 8(a)(1) alleged were committed, if in fact they occurred, by persons called supervisors by the General Counsel and the Union but whose supervisory status is at issue as raised by the challenges, the Company contending that they were not supervisors. If in fact any of the individuals involved were not supervisors, their alleged statements—threats, interrogations, etc.—would not be chargeable to the Respondent. In the interest of clarity, therefore, it will be best to decide the supervisory and other challenge issues at the outset.

A. *Robert Revels*

Revels' job with the Respondent was as safety man. He investigated accidents. In December 1979 he was offered a job by another company in a distant city and decided to accept it. By January 21 he had moved out of town and was at work in his new job. He told the Respondent before leaving that he was not coming back. By the time he left the Company had hired a replacement for him. But a week before the election—held on January 25—Revels received a telephone call from the Company asking would he come back "and work for a couple of days until . . . they could get someone else . . . ." He asked his new boss for a temporary leave of absence and came. He worked 2 days, January 25 and 26, and then went home again to his regular job.

I find that Revels was ineligible to vote in this election and that the challenge to his ballot must be sustained. If ever there was a temporary, passing employee, to everyone's knowledge, it was this man on the day of the election.

B. *Juan Cabrera and Louis Roura*

Roura, the sole witness who testified on the subject of his status and eligibility to vote, said he was an assistant inventory agent, did inventory control, pumped gas into the trucks, and handled things in the parts room. He distributed parts to repair mechanics as needed and did the accounting at an office desk. Roura testified he has no authority over anyone, and there is no evidence affirmatively indicating that he exercised any supervisory authority at all.

As to Cabrera, he did not testify. The only evidence as to him is Roura's statement that Cabrera works in the same parts department with him, in the stockroom, giving out parts as needed by the mechanics.

On this record I cannot find that either Roura or Cabrera was a supervisor at the time of the election. I therefore conclude that the challenges to their ballots must be overruled.

C. *Hemberto Taulo*

This man worked in what is called the compaction department with two other men under a supervisor called Miyares. He went out on calls repairing garbage compressing machines owned by the Company and located at customer locations. He did not testify; the only evidence as to him was given by David Hoopengardner, a supervisor; there is nothing of any significance showing that this man was clothed with, or exercised, any supervisory authority. Again, I therefore find the challenge to his ballot unsupported.

D. *Pedro Isquierdo*

The testimony as to this man is a little bit closer to supervisory status, but I think it falls short of proving true supervisory status. Isquierdo also was not a witness. He worked in the fabrication department, where there are about 12 employees and where garbage containers are serviced, painted, and repaired—550 to 650 each month. Miyares was the manager over all these men. Each night a list was prepared in the office of all the containers that had to be worked on the next day. Isquierdo was given this list in the morning and he distributed the assignments to the men. The men also exercised a choice if they preferred to work on particular containers. The only employee witness who talked about this challenge was Rafael Yancof, of the department. He said Isquierdo told him what to do, and this is true, because Isquierdo's job was to give out the work. When necessary Isquierdo also did regular work himself, as did all the others. It is uncontradicted that he spent 35 to 40 percent of his time painting and repairing containers. He also moved the containers into the area with lifts as needed. If a job was not done it was Isquierdo's duty to report the fact to

Manager Hoopengardner, the higher member of management. Beyond this, there is the fact he wore a white shirt and black pants, while the others worked in blue shirts, and that unlike the rest he did not punch the timeclock. Hoopengardner's defense testimony that Isquierdo had no power to discipline anyone, to recommend raises, or to grant early leave stands uncontradicted. I find the evidence insufficient to prove this man was a supervisor, as contended by the Union, and therefore conclude the challenge to his ballot fails.

E. *Harris Peacock, Curtis Sweets, and Mason McGill*

The Respondent disputes the complaint allegation that these three men were supervisors at the time of the events, early in the year 1980. Company witnesses, and sometimes even the General Counsel's witnesses, referred to Peacock and Sweets as route surveyors and McGill as a driver-trainer. Most of the employee witnesses referred to all three as supervisors. They all three worked out of the central office where the operations of all truckdrivers is focused. There are almost 100 full-time drivers, who use over 50 trucks 7 days a week picking up garbage waste at predetermined locations throughout the greater Miami area. Peacock died before the hearing ended, and Sweets did not testify because of illness. Only McGill of the three appeared at the hearing.

I find that all three of these men were supervisors within the meaning of the Act and that the Union's challenges to their ballots at the election must be sustained.

The story starts with the testimony of the first employee witness called, Walter Gause. He testified that, at one of the regular driver meetings in the office, where Lewis Goodman, chief executive officer, usually talks to the men, Goodman found occasion to say: "If you have any complaints, you speak to any one of the supervisors, which was Harris Peacock, Sam Lennon, Milton Smith, Sweets and McGill, also sitting at the head of the table." At the time Peacock, Sweets, and McGill were sitting at tables in front of the room facing the large group of drivers. In conclusionary language at the hearing Goodman later simply said these three men were not supervisors.

At the General Counsel's request the Respondent produced a printed document listing all the hierarchy in its various departments. Under drivers department, where the 100 drivers work, 6 men are listed: Smith as "manager," Lennon as "assistant manager," and four others as "supervisors"—Stromer, McGill, Sweets, and Peacock. At one point in his testimony Goodman said, "We use this thing everyday," "Everybody has a copy." He continued in his testimony:

> Q. Did you say it was posted . . .?
> A. Yes.
> Q. Posted on the wall some place?
> A. Sometimes on the wall.

At another point the owner attempted to explain the posted notice away as "really nothing . . . made up by a girl . . . a lot of years ago." In my judgment Goodman stands as a discredited witness in this case.

There is another document—a form used everyday in great numbers and without question again revealing the status of what Goodman called mere route surveyors, and not supervisors. Peacock and Sweets used to spend much of their time following individual trucks on their routes in a passenger car, making a minute-by-minute record of each stop, the time spent at every customer location by the driver, the condition of the refuse containers which are owned by the Company, and the functioning of that driver as he discharged his work duties. At the end of each trip Peacock and Sweets filed a detailed report of all they saw. The form is captioned "Supervisor's Daily Route Report," and is the one that was being used every day at the time of the election. Goodman explained this form away too as an old one dating back to when supervisors in fact used to do route surveying, but added that now only "surveyors" do it: "I don't think the title has ever been changed." And finally, still before the election, all drivers were given a card to carry with them at all times, with names and related phone numbers to call in case of emergency. In addition to listing all the conceded supervisors—from Goodman down to all others, the card also names Peacock and McGill. With this there is really no need to add that unlike rank-and-file drivers all three of the disputed men wore yellow shirts and black pants to work, as distinguished also the other supervisors, in contrast to the blue shirts and uniforms worn by the drivers, and that Sweets and Peacock were permitted to drive company cars home for personal use.

In addition to all this it is not disputed that the "route surveyors" directed drivers in their dajly work. The overall company manager, Hoopengardner, and Goodman called this routine, but nothing can alter the fact the men were under orders to comply with such instructions from Peacock and Sweets who told them "what to do." When driver McDonald called in one morning to say he could not report, he spoke to Peacock who at that time summarily said he could have the time off. On another occasion McDonald "woke up" late and again phoned in to excuse himself, only to have Peacock tell him he was being disciplined right there, because of the lateness, with a 3-day suspension. With only this happening, McDonald lost 3 days of work as a result. There is no contradiction of this incident. There is also written proof that Sweets participated in disciplining the drivers. Twice—on December 1, 1979, and again on January 7, 1980—he wrote a detailed report about the delinquencies, while on duty, of a driver named Washington, listing the man's errors and the criticisms that were given him. As already stated, Sweets did not appear as a witness. The Respondent says there were only 3 supervisors over the almost 100 drivers, throughout the 7-day-a-week operation, even while, at least on Saturdays and Sundays, the three admitted supervisors—Smith, Lennon, and Stromer—took some days off. Lennon, one of the three, as a later witness for the Company, testified that he watched Sweets write up those two file reports of misbehavior by driver Washington on separate dates. He said the reason Sweets wrote them was because Smith's handwriting was "not too good, mine either." Lennon

also added that Sweets had no knowledge at all about any of the facts there stated, and that Sweets simply followed Smith's direction "word for word."

On the first day of the hearing, in December 1980, Manager Smith said Sweets and Peacock had authority to report any driver who skipped a garbage can on route, did not shut a lid, or put cans in the wrong place, and then he, Smith, would talk to the driver and take appropriate action. Smith too looked at the two reports in evidence relating to driver Washington and recalled they were in fact written by Sweets. Smith then added it was after those reports were written that he in fact fired Washington. Lennon's story, about Sweets being somebody else's automation when making the misconduct report, came when the hearing was resumed 7 months later, in July 1981. And while Hoopengardner, the overall boss, also shown the two handwritten statements, said he did not know who had written them, he did say, on the first day of the hearing, it must have been a supervisor. Without further comment, I do not believe Lennon's story. I find both written reports, in the handwriting of Sweets, further evidence of his supervisory status.

The testimony of McGill, the only disputed man who appeared at the hearing, did not serve to enhance the Respondent's contention that none of these men was a supervisor. Did he have responsible authority over the drivers? After taking a new man out on a route a few days to train him, he wrote up a report on the man's qualifications, and the result without a doubt turned much upon his appraisal. As far as giving orders was concerned, he described himself as no more than a conduit for orders from above. One employee witness testified that at a driver meeting McGill told the men to keep the trucks clean, to be sure to wear their helmets, else he would suspend them for 3 days. McDonald also recalled hearing McGill tell another man he was being given 3 days off in discipline. McGill denied all this testimony, and much more, but I do not believe him. And then, almost as the last witness in the 7-day hearing, came the following by McGill:

> Q. You just said that you were a messenger boy. Can you explain what you mean?
>
> A. Every word he [driver manager Smith] give me orders to do. That's what I did. I took orders from him.
>
> Q. Did he ever give you an authority to give persons three days off?
>
> A. After I reported to him.
>
> JUDGE RICCI: Did he say to you that you could give the people three days off?
>
> THE WITNESS: Yes.
>
> * * * *
>
> Q. Under what circumstances did he tell you that?
>
> A. If I find someone doing something wrong or abusing the equipment, give them some time off.

There is more. An exhibit prepared by the Respondent shows that between November 1979 and January 1980 McGill's weekly pay was increased by $75. Asked had anyone in the Company told him why he was given that raise, the witness answered:

> No, not to my knowledge.
>
> Q. Did you ask anyone why you were receiving that amount of an increase at that time?
>
> A. No, I didn't.
>
> Q. It was never discussed with you?
>
> A. No, not to my knowledge.

If for no other reason than this sort of testimony, I cannot believe anything McGill said at this hearing.

One of the last witnesses for the Union was Walter Artis, who left the Company in 1979, before the Union's organizational campaign started. He had for some time been manager over the entire truckdriver group. He said clearly he promoted McGill to supervisory status, and that McGill was authorized to direct the work of the drivers and discipline them if in his opinion they deserved it. Artis added such authority was vested as well in Lennon when that man was a route surveyor before being made assistant manager. I will not discredit Artis in this case, as the Respondent suggested at the hearing, merely because in his present employment he joined in a strike called by the very union involved in this case. No more would I discredit Goodman, or any other employer official, on the sole ground that he is the voice of management.

One last contention should be answered. The Company's records show that about the time of the election the disputed men—Peacock, Sweets, and McGill—were being paid a weekly salary that totaled less than drivers of like seniority earned each week. But what the limited statement in evidence does not show is how many hours a day, or how many days each week, the drivers worked, compared to the time spent on the job by the supervisors. If this record shows one thing clearly in its totality, it is that these garbage pickup trucks are on the road each trip much longer than the usual 8 hours a day.

F. *Jose (Pepe) Mole*

Mole works at the Company's landfill location, where the trucks bring and dump all the garbage they collect. He was referred to variously by company witnesses as "lead dozer operator," "in charge of those two men [his brother Julio and Malone also operated the dozers there]," "Mole directed the men." In January 1979 Peacock, the driver supervisor, worked at the landfill with these three men, and was in fact a supervisor, as he had been for many years, working out of the main office over the drivers. In January Peacock left the landfill and only Pepe Mole remained. Employee Malone testified that Goodman then told him "that Pepe would be in charge of the dump area." In May, according to Goodman, Garcia, an admitted supervisor, was placed at the landfill when the total group of employees there expanded to about 12. With this, according to Goodman, Mole became no more than "a leadman," and because he was the most experienced "he directed the other guys." Julio Mole testified that, even after arrival of Garcia with the increased number of employees, Garcia told him to do as

Pepe Mole instructed him, "The guy was boss there was Pepe."

The shifting of position where this challenged ballot is concerned will not do. Clearly in the early part of 1979 Mole was "in charge" at the landfill and effectively supervised the other men. The Company's position really is that his authority ceased when Garcia was sent there. But to men accustomed to do as the man then in authority tells them, such changes in the mind of higher authority have no effect upon their day-to-day life. Again Goodman's testimony leaves much to be desired. Asked had he told Malone that Pepe was in charge, he answered: "Yes, I might say to him that Pepe was the guy directing—yes, I could say that, on top of the garbage. I don't know if I would have said it to Malone." Pepe Mole is still in the Respondent's employ, but was not called to testify.

I find that at the time of the election Pepe Mole was a supervisor within the meaning of the Act and that therefore the challenge to his ballot must be sustained.

G. *Terry Lee*

Terry Lee, a truckdriver, was active on behalf of the Union; he was seen by Assistant Manager Smith talking with the union organizers, he was one of the Union's three observers at the January election, and he signed the tally of ballots for the Union. During the week of February 28 he was discharged, in retaliation for his union activities according to the complaint. In denial, the affirmative defense is that when the Company learned that Lee's chauffeur's license had been suspended—as the Company in fact did learn at that time—it released him solely for that reason.

The issue is one of inference. There are facts pointing in both directions, and therefore the question becomes whether the management agent who fired Lee can be believed as to his true motive. On the first day of the hearing Smith, the manager over drivers, testified that he alone made the decision, that he did not consult with anyone else. Six months later, when the hearing was resumed, Hoopengardner, the higher manager, said, "I made the decision." Right there, the affirmative defense becomes suspect.

On January 19, 6 days before the election, the safety director asked the State Motor Vehicle Bureau for a report on the status of the licenses of all the drivers. He testified he did that because the Company was changing insurance companies at the time. But another witness for the Respondent, Hoopengardner himself, said instead that the inquiry was no more than the normal one the Company makes every year. Be that as it may, the report showed eight drivers, including Lee, with suspended, or revoked, licenses. On Monday, February 25, the men were shown the reports and told they must have their licenses restored by the end of the week. By Wednesday, February 27, two of the other men had had their driving records corrected and their licenses recorded as valid; they showed the necessary documents to management and remained at work continuously. Five of the remaining six men did nothing about having their licenses revalidated and were told that by Friday they would be terminated. They were in fact discharged.

There is ambiguity and conflict in the record as to exactly what talking went on between Lee and the supervisors that week. Smith testified that on Monday he told Lee he would have until Friday to produce a valid license. Jackson, the safety director, testified he told all eight of the men how to go about revalidating their records. It is clear that Lee worked on Tuesday but did not work on Wednesday, or on any day thereafter. Beyond this, the evidence consists of Smith's continuing testimony and Lee's prehearing affidavit, dated March 18, 1980, and received in evidence. It will be recalled he did not testify because he died before being able to do so. The authenticity of Lee's affidavit, as well as his signature, is conceded. And, as Board precedent holds, such an affidavit, without the supporting testimony of the deceased, must be evaluated with maximum caution, and only be relied upon if and when consistent with extraneous, objective, and unquestionable facts. Cf. *Calandra Photo, Inc.*, 151 NLRB 660 (1965); *Custom Coated Products, Inc.*, 245 NLRB 33 (1979).

After saying that on Monday he told Lee about his suspended license, while showing him the MVR report, Smith repeated several times and very directly that he had no conversation ever with the driver thereafter—that Lee did not tell him "the problem with his license was straightened out," or that "something would be coming in the mail to correct it," or "show [him] . . . a piece of paper asking you [Smith] to call the phone number" about his license.

Lee's affidavit tells a different story, as follows: When told by the safety director on Monday evening about the license suspension, and shown the MVR report, he told Jackson he knew nothing about it and would "take care of it right away." That night he learned from the traffic court, where he had, on January 25, paid the fine for the last traffic violation of his, that he would have to go to Fort Lauderdale instead. On Tuesday morning he told his supervisor he did not think he was allowed to drive after having been told about the suspension, and therefore wanted the day off to go to Fort Lauderdale to correct the record. The supervisor told him he would have to drive the truck on the route anyway—license or no license. He did that, and Wednesday morning again asked for the day off for the same purpose, and was permitted to leave. From the shop Lee then went to the highway patrol office, who gave him the telephone number of the traffic court where he could obtain the needed proof that he had in truth paid the fine listed on his license report. On the phone then that court office checked its records, found he had in truth paid, and told him they would right away mail him the proof, so he could deliver it to the highway patrol to have his license immediately cleared.

With this assurance in his hands, still according to Lee's affidavit, the driver returned to the Respondent's place of business Thursday morning, where he talked to Milton Smith, the driver manager mentioned above. "I told Milton that I had talked to the people and they were sending me clearance on the matter . . . I told him that I had the matter straightened out and I gave him the telephone number that I had called to get the matter

straightened out and that he could call and verify this. He walked away without saying anything." Lee also offered to show Smith the original receipt in his possession showing that as of January 25 he had in fact paid for the ticket violation listed in the MVR report. Smith paid no attention to him.

The following Monday, March 3, Lee received the necessary papers from the traffic court and on March 4 took them to the highway patrol office "and straightened out the matter." While this was going on, Smith ignored him. That evening he met Smith again, and "showed him the paper and explained that I had the matter straightened out, but he did not say anything about it."

To start with, what is the rationally more probable thing Lee would do in the circumstances? It is a fact he had paid the fine in question. He had been ticketed on December 22, 1979, and had paid a $25 fine on January 25. A document placed in evidence, issued by the traffic court, and received in evidence without dispute as to authenticity proves that. It is also a fact that the only offense or violation listed in the MVR received by the Company, as having caused the license suspension, was that single December 22 traffic violation. That part of Lee's affidavit therefore—that he ran quickly to the police, that he verified the records of the traffic court without delay, and that he got the ticket "straightened out" by March 4—must be believed. Is it not equally logical to believe that, having accomplished that, the driver would without delay bring the good news back to the manager and save his job?

But this last question is answered with absolute certainty by another agreed-upon document received in evidence, one which gives the absolute lie to Smith's testimony. On April 9, 1980, counsel for the Respondent—the same lawyers who represented it at this hearing—wrote a letter of position to the Board's Regional Director on this very subject of the alleged illegal discharge of Lee. Among other things, that letter reads:

> The evidence indicates that on Wednesday morning, February 27, 1980, Lee came to Smith and claimed that the license suspension was all a mistake and that a letter correcting the situation would be forthcoming at some unspecified later date.

All that a lawyer knows about the critical facts of any proceeding is what his client tells him. This was the lawyer, and his client Smith, stating the facts as they were. I think it best not to comment upon the significance of a litigant, assisted by his lawyer, so obviously changing his story when under oath at the hearing. The added comments, also in the lawyer's letter, that the manager's indifference towards Lee that week should be overlooked because he lacked "the wisdom of Solomon," and because he is a "simple minded man," will not do to restore Smith's credibility in this case.

I find it a fact that on Thursday Lee told Smith his license was in good order, and that Smith could verify the assertion with a simple telephone call, and further that the following week he again told Smith all records were in order. By paying no attention to him, and by not putting him to work again, Smith proved, by his conduct, that the matter of Lee's suspended license was not the reason he discharged him at all. Lee having been told on Monday that he would have time to correct his traffic records, it means the Company was perfectly happy to have him drive in the interval even without a correctly recorded chauffeur's license. It even insisted on his driving during Tuesday under such conditions. There can be no rational explanation of why it refused to let him continue after receiving his assurance it would only take a day or two more. With Smith's falsification as a witness so clearly established, he cannot be believed as to what his real motivation was. There is nothing to indicate, nor is it claimed, that Lee was an unreliable driver for any other reason.

It is true, as the Respondent stresses, that the five other men whose licenses had been suspended were in fact discharged. But there is no indication any of those five brought anything back to the Company's attention about having their licenses revalidated. It is also true that in the past the Respondent discharged other drivers for not having valid licenses. But it is also true in some cases the Respondent went out of its way to assist other drivers to correct their traffic delinquencies so they could be kept on. Goodman, the owner, testified that some time in late 1979 or early 1980 a driver named Bennie Jess was arrested and in the police investigation it came to light he had not paid for two traffic tickets, with the result that his license was suspended. Goodman admitted he hired a lawyer to get Jess out of jail and assisted him to pay the traffic tickets so his license could be restored. Why did Smith not act as cooperatively with Lee when all that was required was an inquiring telephone call? More, Jackson, the safety director, also admitted that another driver—Ernest Scott—had his license suspended on November 29, 1979, because of an accident he had had. Jackson said that when he learned the man was driving without a license: "I looked into this for him; got rid of the FR [accident listed as the cause for suspension of license]. He then took an oral test and obtained a valid driver's license." Jackson came to work in late January 1980; this means he did this just about the time Smith ignored Lee's quick correction of his record. This clearly disparate treatment of Lee as against Scott cannot be swept away by Jackson's statement at the hearing that "I did not tell my supervisor nor Mr. Goodman. I acted on my own."

When the asserted reason advanced in justification of the discharge of a man is false, as is clear in this instance, the inference of illegal motivation alleged in the complaint is greatly strengthened. *Shattuck Denn Mining Corporation* v. *N.L.R.B.*, 362 F.2d 466 (9th Cir. 1966). But even without all that, there is the direct and to me credible evidence that only a week before the election—this would be just when the Company asked for a check on the licenses of all its drivers, Lennon, the assistant driver manager, told driver McDonald "that we were having a license check. A lot of men is going to be gone, and Terry Lee is going to be the first on the list." When to this is added the cumulative evidence of union animus generally in management, and the Company's knowledge of Lee's outstanding prounion sentiments, the finding is

compelled that he was discharged because of his union activity. I find that by discharging this driver the Respondent violated Section 8(a)(3) of the Act.

H. *Violations of Section 8(a)(1)*

A preliminary comment upon this aspect of the case is in order. This is now essentially a representation proceeding. The election was held about 2 years ago and the question concerning representation is still unresolved. Lee was discharged after the election, and that question therefore—lawful or unlawful dismissal—can have no bearing on the status of the Union as a bargaining agent. Not that that issue is not important, but the fact is the only impact it can have is possible payment of lost earnings to his estate. Beyond that, it is entirely a matter of whether the Union is to be certified now, or whether another election should be held.

The tally of ballots showed the Union ahead by 6 votes—69 to 63. There were then 12 challenges; 3 were resolved by agreement before the hearing, with those ballots thrown out; the remaining 9 were litigated here. As shown above, I think four of the nine were good challenges. This leaves only five ballots to be opened. Were all five, when opened and read, against union representation, the Union would still become established—69 to 68. What this means is that in any event the Union's objections—and the multiple allegations of 8(a)(1) violations listed in the complaint, in substance the same thing—would be mooted, at least insofar as the Charging Party is concerned. Therefore, to belabor in this Decision every jot and tittle of the cumulative evidence of repeated violations of Section 8(a)(1) detailed in the unending over 1,000 pages of transcript, and thereby extend this proceeding who knows how many additional months, would run counter to the Union's true interests, which is always to seek to establish itself as bargaining agent if in fact a majority of the employees so desire.

And this would be equally true were exceptions to be filed to this Decision and were the Board, on review, to disagree with my findings. Even should the challenges as eventually decided lead to a failure of majority on behalf of the Union, the Union would still be entitled to a new and immediate election because the 12-month statutory period expired long ago. No matter how the case be viewed, unnecessary emphasis—and its consequent delay—upon repeat unfair labor practices of the same kind, which would not alter the remedial order to be issued, would defeat the major objective of all representation proceedings, which is to resolve with finality the question concerning representation.

This is not to say that significant unfair labor practices proved on the record should not be found to have been committed. I hold only that a balancing of real interests in a particular situation requires an element of discretion. There is no question but that there were threats, promises of benefits, interrogations prohibited by the statute, all before the election was held. Certainly enough occurred to support the Union's objections. But the Union can have an election no matter what, because the mere passage of time gives it that right. No union goes to an election unless it has the support of the employees, so that there will be no problem quickly to obtain 30 percent of cards signed anew were it necessary.

A number of employee witnesses testified about specific instances of interrogations, threats, invitations to bring their complaints to management instead of siding with the Union, etc. Some of the supervisors so quoted denied having said such things, after referring precisely to the earlier testimony of the employees. The principal company witnesses in this respect were the owner, Goodman, Smith, the driver manager, and McGill, the supervisor. In the light of the record as a whole, the consistent pattern of the story as told by the General Counsel's witnesses, the inherent implausibility of much of what some of the company witnesses said—as mentioned above—as well as their demeanor on the stand, I do not credit the defense witnesses against the rank-and-file employees.

1. At the very start of the union organizational campaign, on October 2, 1979, the Company distributed a statement to all the employees, emphasizing the Company's planned policy to oppose their activity in every way possible. Among the advice statements it gave was an invitation to report any instances where the union organizers might put pressure upon them to join the Union. I therefore find, as Board law holds, that the Respondent violated Section 8(a)(1) of the Act by that beginning reaction. See *J. H. Block & Co., Inc.*, 247 NLRB 262 (1980), and *Bil-Mar Foods of Ohio, Inc.*, 255 NLRB 1254 (1981).

2. As the days passed, the unfair labor practices became less oblique, more direct. Goodman continued to hold employee meetings to discuss the matter with the drivers. As set out above, he at one meeting told the men to bring their complaints to supervisors for resolution in place of the Union. Employee Cause quoted Goodman as listing "Harris Peacock, Sam Lennon, Milton Smith, Sweets and McGill" as the supervisors who would listen to complaints. Goodman's version of this meeting is that it "wouldn't be possible" for him to have named "McGill, Sweets or Peacock," among the supervisors he referred to that day. As it happens, I do not credit him. But even if he meant to deny the contrary testimony as to these three individuals, the totality of his version means he did tell the men to have their gripes looked after by the admitted supervisors, who were also present in the front of the room. I find that by such invitations Goodman violated Section 8(a)(1) of the Act. That solicitation of grievances from employees as a device to discourage their union activities is an unfair labor practice under this statute is too well established a principle to require citation of authority.

3. There were interrogations of many kinds. Employee Malone testified that, in late December or early January, Garcia, a conceded supervisor, asked him and other drivers whether the Union had contacted them, and they said yes. A few weeks later Garcia took Malone to a Holiday Inn to sit and have a drink with Goodman; Hoopengardner was also there. According to Malone, Goodman asked was he for or against the Union, and when he answered he had not yet decided, Goodman said "he wanted me to attend the meetings and to let him know what went on at the meetings." At this point Goodman

reminded Malone he owed the boss a favor. It is a fact Goodman had sometime earlier assisted that driver to come to the United States from the Bahamas by assuring him of a job in writing. When Malone said he did not know the drivers personally and therefore could not bring back the names, Goodman told him to make a record of the truck numbers as a means of identification, and to pass that information on to Garcia. A week later Garcia came to Malone's jobsite and asked him about the union meetings and Malone reported to him what had been discussed there. "He asked me if I had any names. I told him no, I didn't."

Goodman and Hoopengardner denied the statements attributed by Malone to Goodman at the Holiday Inn. But they did not deny the driver having been brought there by Garcia to meet with the three top supervisors. Garcia, too, contradicted Malone as to what was said while the drinks were being passed around, but he did not deny having questioned the driver before the meeting or asking him later what had taken place at the union assembly and just who was there.

I believe Malone's story. It fits perfectly into the part which Garcia did not deny. More important, Goodman did not impress me as a witness; he was argumentative at times, often oblique and indirect in his professed denials, very evasive while testifying. I find that by Garcia's continuing question of Malone as to his attitude towards the Union, by his inquiries as to the identity of just who favored the Union and/or attended union meetings, and by Goodman's instructions to the man who was obligated to him to spy on the union activities of others and keep management informed, the Respondent violated Section 8(a)(1) of the Act. *Los Angeles New Hospital*, 244 NLRB 960 (1979).

4. Rene Castile, another employee, testified that in December Garcia asked him whether he had gone to a union meeting; when Castile said yes, the supervisor asked him "who also went to the union meeting?" Because, as he said at the hearing, Castile did not "want to get anybody else in trouble," he answered he did not know. Later that same day Supervisor Garcia approached Castile again: ". . . he said that they didn't like nobody make a fool out of him and a liar out of him because he find out that Julio Mole and Malone went to the union meeting too. And I didn't tell him. And I told him that was none of my business. I didn't want to be a squealer." I make the same finding. By the supervisor's questioning of Castile in this manner, the Respondent again violated Section 8(a)(1) of the Act.

5. Garcia spoke to Alberto Rodriguez, a bulldozer operator, in the same vein. A month before the election, as Rodriguez testified, Garcia called him alone into the office, and told him "Not to vote for the union, that it was no good, that all that did was create problems. . . . That if the union went on strike the work was going to be carried on anyhow, even if it meant shooting shots. . . . He said he was going to keep on going in spite of anybody, even if he had to shoot somebody." The two talked again after the election about a loan Rodriguez needed to pay some back taxes. The supervisor asked him, in the presence of Hoopengardner, "if the union had visited me at my house . . . if I had voted for the union." This questioning by Garcia was precisely in keeping with his interrogation of Castile. I credit Rodriguez, and find that by Garcia's interrogation of Rodriguez about his union activities, and by his threat to shoot people in case of a strike, the Respondent committed further violations of Section 8(a)(1).

6. Another employee, Bobby Gamble, a tire repairman, testified that Supervisor McGill told him, early in the campaign: "If I were to get involved with the union, that the company would let me go because there wasn't going to be no union in the company." Gamble also recalled McGill telling him shortly thereafter that "Lew Goodman had my name and Jimmy Regal's name, upstairs, a list of names of the people who are involved in the Union. . . . He said I was causing too much problems in the company and he said I better leave the Union alone . . . because I would be the first to go." Gamble also testified about a conversation with Manager Smith later. He said that he asked Smith "what's this I heard that Lew Goodman got me and Jimmy Regal's name upstairs about a union?" and that then Smith took him in to the office to talk further. At this point Gamble's testimony becomes confused, but he did make clear that Manager Smith asked him was he involved with the Union, adding that "they were trying to keep me out of trouble."

For reasons set out above, I do not credit McGill's denials of this testimony. I find that by McGill's and Smith's questioning of Gamble, and by McGill's telling the employee the Company had a list of union supporters, the Respondent violated the statute all over again.

7. I see no point in continuing here with other like violations of the statute shown on this record. A final one will be enough, and it is McDonald's testimony that before the Motor Vehicle Bureau check was made on the truckdrivers' licenses, Lennon, the assistant driver manager, told him the check was about to be made and that he would be the first to go. I credit McDonald against Lennon's denial, and find the statement to have been a threat of discharge because of union activities, and a further unfair labor practice.

I. *The Union's Objections*

With the foregoing findings proving in fact that the Respondent resorted to a number of coercive unfair labor practices before the election to influence the employees towards a no vote in the balloting, the Union's objections have been clearly sustained. I therefore recommend that in the event resolution of the challenged ballots does not result in a majority in favor of the Union, the results be set aside and a new election held when in the judgment of the Regional Director the time is appropriate.

The Union's objections, as timely filed, list other activities by company representatives said to have improperly interfered with the balloting. With the unfair labor practices found there is no need to consider all the others, except for a single one. The Company held, as shown, several meetings of all the drivers before the election; all the men were paid to attend those meetings, and the purpose was to urge all of them to vote no. Quoting Good-

man at these meetings, McDonald testified as follows: "He said, 'Even if the union won, they would only require me to sit out and talk. I would say come on in, sit around and talk, and whatever they ask I'm going to say no.' . . . He said when they asked, whatever they asked for he would say no . . . . He said every man there would be fired if we went on strike." "He said, 'Even if you have signed a union card, you could still vote no, I promise nothing will happen to you, or even though you have signed it . . . even you who haven't sign a union card can still vote no.'"

In contradicting this testimony Goodman said he read from a prepared statement, which he offered into evidence. It was when asked by company counsel whether he had uttered these words that Goodman's testimony was particularly vague and evasive. In the end he admitted that, in answering questions which his talk provoked, he said things that are not reflected in his pre-talk notice.

> Q. Okay, so your testimony then is that at that last meeting you made statements that were in addition to what is on that sheet?
>
> A. Yes.

Again I credit McDonald and find that by that statement Goodman also violated the statute.

J. *The Employer's Objections*

The Company's objections are a blunderbuss attack in every direction, listing no less than 20 forms of misbehavior by practically everyone having anything to do with the election—lies spoken by union agents about their success elsewhere, improper electioneering, false promise of strike benefits and future representation by union attorneys, threats of physical violence, bias in favor of unions by the National Labor Relations Board itself, appeals to racial prejudice, etc. On all but two of the entire list there was nothing offered at the hearing even worth mentioning in this report.

The only witness who testified in support of a charge of bribery by the Union was Russell Hamilton, the Company's attorney who represented it in the preelection conference on the day of the balloting. He said that right after the conference, but before the voting started, he stood on the landing outside the entrance to the building and saw Gid Parham, a union agent, talking with another man. Hamilton did not know who the other person was at the time but later that day he learned it was "either Terry Lee or James Hughes," two of the Union's observers at the election. Hamilton said that from "20 yards approximately" away, he looked while Parham "counted out some bills," and "a black man's whose name I did not know at the time signed a receipt." The witness then changed this to say "he signed a piece of paper." There is not another word of testimony about what Hamilton claims he saw taking place near the car at that moment. I am not at all sure I can believe Hamilton about this, for he answered questions evasively, and clearly was trying to create a picture he did not really see. Before leaving the stand he admitted he had no idea what that "piece of paper" was, or what those people were talking about. This objection is not made more convincing simply because an agent of the Union, Tony Zivalich, said his union does compensate employee observers when they lose work pay because of such services to the Union. Zivalich said he thought both Lee and Hughes had been paid for lost time, but added this is always done after the election because there is no way of knowing in advance whether the man will be docked by the employer. And I assume the employer also, if it asks a man to act as its observer, will pay him for time lost from work. If in fact the employer did not do so in this case, I think there would be nothing improper in its doing so the next time, if there is a next time. This "bribery" objection was not proved.

The only other objection on which testimony was offered says that "between 20 and 50" of the voters were "illiterate," and that because the Board agents did nothing about the Employer's request that something be done about that, the results of the election must be set aside. Again I see no sufficient proof in this record for a finding that any of these employees were so deficient in their knowledge of English as to have been unable coherently to participate in the election. All those case precedents, therefore, which the Company cites in its brief, are inapposite.

Again one of the Company's witnesses was Hamilton. He said he had been "informed" that there were "20 plus maybe as many as 50 employees who could not read or write," and that he told this to the Board agent. That this man's conclusionary and hearsay statement of opinion on this subject proves nothing is clear. Lennon, the assistant driver manager, started by saying that of the approximately 90 drivers "maybe 15 or 20 of them" could not read English. He added he was not referring to Spanish-speaking emigrants but to native born Americans, "but they can't read or write." The witness then also testified as follows:

> Q. Do these men come in and say to you—or to anyone, as far as you know, I can't read and I can't write?
>
> A. No. I've never had one come to me for that.
>
> Q. You've never had anyone come to you and say that?
>
> A. No, I haven't.

The question then became, naturally, on what basis did he make this broad assertion? He said the drivers sometimes ask him questions about their route books. Every morning the driver is given a number of cards—as many as 100—listing the names and addresses of customers where he is to make a garbage pickup. There are changes made regularly in the route assignments, sometimes before he sets out and sometimes while he is on route. Again from Lennon's testimony: "A lot of them will come to me, you know, if they get a new stop or something and they don't understand it. They don't know what it is. They come to one of us and asks us what is it and, you know, we have to explain it to them." Obviously the drivers must be able to read and understand so many written instructions every day, else they would hardly do the work they do. To kill off this ines-

capable and here determinative reality, then came the following question by company counsel: "Q. To the extent that these people are always going to the same stops. They don't have to read. I would think they do it automatically. A. Right." This conclusionary statement, not a question at all, out of the lawyer's mouth, serves only to show all the more the weakness of this entire objection.

All the drivers must take tests for chauffeur's licenses; all read their route book instructions every day; all read traffic signs and easily distinguish on them a yes from a no. The posted notice of election was written both in Spanish and in English; the sample ballot publicized in advance was in both languages. Miller, an employee who was an observer for the Company at the balloting, and also called in support of this objection, said that from his experience over a period of 10 to 12 years, "six or eight" men could not read, and that he knew this because at times they would ask him to explain certain "pamphlets" the Company put in their pay envelopes. But Miller also said that as he watched about 125 employees go in to vote, not one of them "express[ed] any difficulty in understanding the ballots." Not a single one of the 50 illiterates was produced to say he misunderstood anything connected with the election.

I find the Respondent has not proved that there was any need at all for the Board agent to deviate from established practices in holding an American election in this case.

IV. THE REMEDY

The Respondent must be ordered to cease and desist from further commission of the type of unfair labor practices herein found. It must also be ordered to pay to the estate of Terry Lee whatever amount of lost earnings he suffered in consequence of his illegal discharge prior to the time of his death.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. By discharging Terry Lee for engaging in protected union activity, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(3) of the Act.

2. By the foregoing conduct, by asking employees to report to management strong solicitation of signatures on union cards, by soliciting employee grievances for the purpose of discouraging employees' prounion activities, by asking employees whether union agents have asked them to join a union, by asking employees whether or not they favor a union, by asking employees to report to management the identity of fellow employees who attend union meetings, by telling employees the Respondent would shoot employees who might engage in a strike, by threatening to discharge employees in retaliation for their prounion sentiments or activities, by threatening to discharge employees if they should engage in a strike, and by telling employees that management maintains a list of prounion-minded employees, the Respondent has violated and is violating Section 8(a)(1) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[1]

The Respondent, United Sanitation Services, Division of Sanitas Service Corp., Miami, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discharging or in any other manner discriminating against its employees because of their union or protected activities.

(b) Asking employees to report strong solicitation of signatures to union cards by organizers.

(c) Soliciting employee grievances for the purpose of discouraging employees from union activities.

(d) Asking employees whether union agents have invited them to join a union.

(e) Asking employees whether or not they favor a union.

(f) Asking employees to report to management the identity of fellow workers who attend union meetings.

(g) Telling employees the Respondent would shoot employees who might engage in a strike.

(h) Threatening to discharge employees in retaliation for their prounion sentiments or activities.

(i) Threatening to discharge employees if they engage in a strike.

(j) Telling employees that management maintains a list of prounion-minded employees.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action which is deemed necessary to effectuate the policies of the Act:

(a) Pay to the estate of Terry Lee the monetary value of any loss of earnings which he may have suffered by virtue of the discrimination against him, with interest.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

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[1] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations. be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Post at its Miami and Medley, Florida, places of business the attached notice marked "Appendix."[2] Copies of said notice, on forms provided by the Regional Director for Region 12, after being signed by its representatives, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."